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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 140

THE CREEK NATION, PETITIONER,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED JUNE 15, 1937.

CERTIORARI GRANTED OCTOBER 11, 1937.

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INDEX.

	Original	Print
Record from Court of Claims	1	1
History of proceedings	1	1
Second amended petition	1	1
Exhibit "A"—Resolution accepting and ratifying Bardwell line	4	5
General traverse	5	5
Argument and submission of case	5	6
Special findings of fact	5	6
Conclusion of law	11	14
Opinion of the court, Williams, J.	12	14
Judgment, (March 13, 1933)	21	26
Proceedings after entry of judgment	21	26
Further proceedings in case	21	26
Substitution of attorney of record	21	26
Argument and submission on order of remand	22	27
Additional findings of fact (in addition to special findings of fact filed March 13, 1933)	22	27
Conclusion of law	22	27
Opinion of the court, Williams, J.	23	28
Judgment of November 9, 1936	27	31
Proceedings after entry of judgment	21	31
Clerk's certificate (omitted in printing)	28	
Order allowing certiorari	29	32

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[fol. 1]

IN COURT OF CLAIMS OF THE UNITED STATES

No. F-205

THE CREEK NATION

vs.

THE UNITED STATES

I. HISTORY OF PROCEEDINGS

On July 3, 1926, the plaintiff filed its original petition.

On July 23, 1926, by leave of court, the plaintiff filed its amended petition.

On June 24, 1927, by leave of court, the plaintiff filed its second amended petition, which is as follows:

II. SECOND AMENDED PETITION—Filed June 24, 1927

To the honorable the Court of Claims:

The petitioner, the Creek Nation, respectfully represents—

I

That by a certain act of Congress, approved May 24th, 1924 (United States Statutes at Large, vol. 43, part I, page 139), petitioner was authorized and empowered to bring this action. That said act was later modified by a joint resolution (44 Stat. 568) permitting plaintiff to bring separate suits on one or more causes of action.

II

That by a treaty duly entered into by the United States and petitioner on the 14th day of February 1833, the United States granted, in fee simple to petitioner, the following described lands to wit:

"Beginning at the mouth of the north fork of the Canadian River, and running northerly four miles; thence running a straight line so as to meet a line drawn from the south bank of the Arkansas River opposite to the east or lower bank of Grand River, at its junction with the Arkansas, and which runs a course, south 44 degrees west, one

mile, to a post placed in the ground; thence along said line to the Arkansas, and up the same and the Verdigris River to where the old territorial line crosses it; thence along said line north to a point twenty-five miles from the Arkansas River, where the old territorial line crosses the same; thence running a line at right angles with the territorial line aforesaid or west to the Mexico line; thence along the said line southerly to the Canadian River or to the boundary of the Choctaw country; thence down said river to the place of beginning."

[fol. 2]. III

That by article 3 of the treaty of 1866 (14 Stat. 785), the Creek Nation ceded to the United States "the west half of their entire domain, to be divided by a line running north and south." That article 8 of said treaty is as follows:

"It is agreed that the Secretary of the Interior forthwith cause the line dividing the Creek country, as provided for by the terms of the sale of Creek lands to the United States in article third of this treaty, to be accurately surveyed under the direction of the Commissioner of Indian Affairs, the expenses of which survey shall be paid by the United States."

IV

That on August 22nd and 24th, 1871, Frederick W. Bardwell, under the direction of the Commissioner of Indian Affairs, surveyed and established the boundary line between said Creek Nation and the land ceded by it to the United States. That said Creek national domain had, at said time, never been accurately surveyed and that said Bardwell divided said national domain without any data by which to make an accurate division. That said Creek Nation, at said time, complained that more than one half of their national domain had been taken by the running of said line; but that said complaints were disregarded and that on the 5th day of February 1872 the Secretary of the Interior approved said Bardwell line, and that said Bardwell line thereby became established as the west boundary of the Creek Nation.

V

That in 1872 one E. N. Darling, having been directed to divide said ceded land into sections, closed the corners

of his eastern line of sections east of said Bardwell line, thus overlapping said Bardwell line and making a new north and south line east of said Bardwell line and within the lands retained by the Creek Nation.

VI

That from various surveys that had been made, the Creeks learned, in 1881, that said Bardwell line had actually taken over 200,000 acres of their land which they had not ceded, and for which they had received no compensation. The Creek Nation continuing to press its claim to this land, Congress, by act approved March 3rd, 1885 (23 Stat. 367), provided, that unless said Creek Nation should, within twelve months, by an act of its national council, accept and ratify said Bardwell line, no payments would be made of any money due them by the United States under their various treaty provisions. That in compliance with said act of [fol. 3] Congress, said Creek National Council passed said required resolution, accepting and ratifying said Bardwell line, a copy of which resolution is hereto attached as exhibit A. That said Bardwell line thereby became by an act of Congress, ratified by the Creek Nation, the western boun- Congress, ratified by the Creek Nation, the western boundary of said Creek Nation.

VII

That notwithstanding the fact that the west boundary of plaintiff's land had been thus defined and established, certain maps in the General Land Office made from the erroneous Darling survey, showed a strip of land, east of the Bardwell line, containing 5,575.57 acres, extending along said entire boundary, to be the property of the United States.

VIII

That when said lands of the United States, west of said Bardwell line, were, on September 21, 1891, opened for settlement, the General Land Office did, on account of said erroneous map, through error and inadvertence, permit said strip of land, east of said Bardwell line, to be opened to settlement, later through error and inadvertence, did issue patents therefor.

IX

That said situation having been called to its attention, Congress did, on June 21st, 1906 (34 Stat. 325), pass an act